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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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POSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 12-28879-E-11
)	
ANNETTE HORNSBY,)	
)	
Debtor.)	
)	
AUGUST B. LANDIS, ACTING)	Adv. Proc. No. 12-2718
UNITED STATES TRUSTEE,)	Docket Control No. UST-1
)	
Plaintiff,)	
)	
v.)	
)	
ANNETTE HORNSBY,)	
)	
Defendant.)	
)	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION

The U.S. Trustee for Region 17 has filed this Adversary Proceeding seeking to obtain an injunction imposing a five year pre-filing review requirement against Annette Hornsby, the Debtor in pending case no. 12-28879 ("Defendant-Debtor") as a condition on her filing subsequent bankruptcy cases. The U.S. Trustee does not seek a complete ban on the Defendant-Debtor filing subsequent bankruptcy cases during the period of the injunction. The U.S. Trustee asserts that the Defendant-Debtor has personally filed

1 seven bankruptcy cases since December 18, 2007. The first three
2 cases were filed in the Northern District of California and the
3 subsequent four cases were filed in the Eastern District of
4 California. It is further alleged that the Defendant-Debtor's
5 seven bankruptcy filings are part of a string of 16 bankruptcy
6 filings which are part of a scheme to protect one or more of the
7 Defendant-Debtor's real properties. The injunction is requested as
8 to the Defendant-Debtor, whether in her name or using an alias.

9 Jurisdiction for this Adversary Proceeding exists pursuant to
10 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases
11 and all related matters to the bankruptcy judges in this District.
12 E.D. Cal. Gen Orders 182, 223. This Adversary Proceeding is a core
13 matter arising under Title 11, including 11 U.S.C. §§ 301, 349, and
14 105(a). 28 U.S.C. § 157(b)(2)(O) and the inherent power of this
15 court.

16 **U.S. Trustee's Motion and Supporting Pleadings**

17 In his Motion, the U.S. Trustee sets forth the following
18 grounds with particularity for the entry of a judgment against the
19 Defendant-Debtor,¹ and provides supporting evidence thereof.

20 A. The Defendant-Debtor has failed to file an answer or
21 other responsive pleading to the complaint and her
default has been entered by the court.

22 B. The relief requested is that the Defendant be barred for
23 a period of five years from filing any further bankruptcy
cases without obtaining the authorization from the court
in which she seeks to file the case.

24 C. The Defendant-Debtor has filed seven bankruptcy cases
25 since December 18, 2007. The first three cases were
filed in the Northern District of California and the next
26 four cases were filed in the Eastern District of

27
28 ¹ Federal Rule of Civil Procedure 7(b) and Federal Rule of
Bankruptcy Procedure 7007.

1 California. The first five cases were filed in *pro per*.
2 In the sixth case the Defendant-Debtor was represented by
3 Carolle Hudson, Esq. and by Sunita Kapoor, Esq. in this
4 seventh case.

5 D. The Defendant-Debtor's seven bankruptcy filings are part
6 of a string of sixteen bankruptcy cases filed to protect
7 properties owned by the Defendant-Debtor.

8 E. The bankruptcy cases filed by the Defendant-Debtor or to
9 protect properties of the Defendant-Debtor are:

10 1. Annette Hornsby, Case No. 12-28879 E.D. California
11 Counsel: Sunita Kapoor, Esq.

12 a. Chapter 11
13 Date Filed: 05/08/2101
14 Pending

15 b. Common Addresses and Information with other
16 Named Debtors

17 (1) Hornsby's address listed as 2319
18 Bennington Dr., Vallejo, CA

19 c. Common Assets with Other Named Debtors

20 (1) 2319 Bennington Dr. Vallejo, CA (Fee
21 Simple)

22 (2) 324 Moonraker, Vallejo, CA (Fee Simple)

23 (3) 950 Harrison St. #207, San Francisco, CA
24 (Notice of Lis Pendens, Wrongful
Foreclosure)

25 d. Additional Information

26 (1) Deutsche Bank National Trust Company
27 filed a motion for relief from the
28 automatic stay (LHL-1) for an unlawful
detainer action to obtain possession of
the 950 Harrison St. property, asserting
that it was the owner pursuant to a
December 7, 2009 pre-petition
foreclosure. The motion was granted.

2. Annette Hornsby, Case No. 12-21050 E.D. California

3 a. Chapter 13
4 Date Filed: 01/19/2012
5 Date Dismissed: 02/23/2012

6 b. Common Assets with Other Named Debtors

1 (1) 2319 Bennington Dr. Vallejo, CA
2 (Residence/Owner)

3 (2) 324 Moonraker, Vallejo, CA (Rental/Owner)

4 (3) 950 Harrison St. #207, San Francisco, CA
(Owner)

5 c. Common Addresses and Information with other
6 Named Debtors

7 (1) Hornsby's addressed listed as 2319
8 Bennington Dr., Vallejo, CA

9 d. Additional Information

10 (1) Deutsche Bank National Trust Company
11 filed a motion for relief from the
12 automatic stay (LHL-1) for an unlawful
detainer action to obtain possession of
the 950 Harrison St. property, asserting
that it was the owner pursuant to a pre-
petition foreclosure.

13 Kennett Taylor filed an opposition
14 stating that his "possession and property
15 rights will be detrimentally affected" if
he were not allowed to oppose the motion
for relief.

16 Before the motion could be heard the case
17 was dismissed for the failure to file
Schedules and other required documents.

18 3. Kennett P. Taylor, Case No. 10-33303 N.D.
19 California

20 a. Chapter 13

21 Date Filed: 08/26/2010
Date Dismissed: 09/20/2010

22 b. Common Addresses and Information with
Defendant-Debtor

23 (1) Taylor's address listed as 950 Harrison
24 St. #207, San Francisco, CA.

25 c. Additional Information

26 (1) Deutsche Bank National Trust Company
27 filed a motion for relief from the
28 automatic stay for an unlawful detainer
action to obtain possession of the
950 Harrison St. property, asserting that
it was the owner pursuant to a pre-

1 petition foreclosure. The Motion was
2 granted.
3

4 4. Kennett P. Taylor, Case No. 10-32793 N.D.
5 California
6

7 a. Chapter 13
8 Date Filed: 07/26/2010
9 Date Dismissed: 08/05/2010
10

11 b. Common Addresses and Information with
12 Defendant-Debtor
13

14 (1) Taylor's address listed as 950 Harrison
15 St. #207, San Francisco, CA.
16

17 c. Additional Information
18

19 (1) Deutsche Bank National Trust Company
20 filed a motion for relief from the
21 automatic stay for an unlawful detainer
22 action to obtain possession of the
23 950 Harrison St. property, asserting that
24 it was the owner pursuant to a pre-
25 petition foreclosure. The bankruptcy
26 case was dismissed for failure to file
27 Schedules and other required documents
28 before the motion was heard.
29

30 5. Ramoan T. Roberts, Case No. 10-32580 N.D.
31 California
32

33 a. Chapter 13
34 Date Filed: 07/09/2010
35 Date Dismissed: 08/03/2010
36

37 b. Common Assets with Defendant-Debtor
38

39 (1) No Schedules Filed.
40

41 (2) Mailing Matrix lists the following,
42

43 (a) Wachovia Mortgage for 324 Moonraker
44 Dr., Vallejo, CA.
45

46 (b) Deutsche National Trust for 950
47 Harrison #207, San Francisco, CA.
48

49 c. Common Addresses and Information with
50 Defendant-Debtor
51

52 (1) Robert's address listed as 950 Harrison
53 St. #207, San Francisco, CA.
54

1 6. Ramoan T. Roberts, Case No. 10-46575 N.D.
2 California

3 a. Chapter 13
4 Date Filed: 06/09/2010
5 Date Dismissed: 06/25/2010

6 b. Common Assets with Defendant-Debtor
7 (1) No Schedules Filed.
8 (2) On Mailing Matrix Roberts listed Wachovia
9 Mortgage "Regarding-Property,
10 324 Moonraker Dr., Vallejo, CA 94590."
11 c. Common Addresses and Information with
12 Defendant-Debtor
13 (1) Robert's address listed as 6273 Brookside
14 Ave., Oakland, CA

15 7. Annette Hornsby, Case No. 08-35771 E.D. California

16 a. Chapter 11, Converted to Chapter 7
17 Date Filed: 10/29/2008
18 Date Chapter 7 Discharge: 01/22/2010

19 b. Common Assets with Other Named Debtors
20 (1) 2319 Bennington Dr. Vallejo, CA (Fee
21 Simple)
22 (2) 324 Moonraker, Vallejo, CA (Fee Simple)
23 (3) 8019 Michigan, Oakland, CA (Fee Simple)
24 (4) 950 Harrison St #207, San Francisco, CA
25 (Fee Simple)
26 (5) 6273 Brookside Ave, Oakland, CA (Fee)
27 c. Common Addresses and Information with other
28 Named Debtors
29 (1) Hornsby's address listed as 2319
30 Bennington Dr., Vallejo, CA

31 d. Additional Information
32 (1) U.S. Bank, N.A. filed a motion for relief
33 from the automatic stay to evict
34 Defendant-Debtor from the Brookside Ave.
35 property, alleging that a pre-petition
36 foreclosure had occurred. The Motion
37 (JMS-1) was denied, the automatic stay

1 not having gone into effect in the
2 bankruptcy case pursuant to 11 U.S.C.
3 § 362(c)(4).

4 (2) Wachovia Mortgage filed a motion for
5 relief from the automatic stay to
6 foreclose on the Bennington Dr. property.
7 The motion (DMM-1) was denied based on
8 there being no automatic stay in the
9 bankruptcy case.

10 (3) Deutsche Bank National Trust Company
11 filed a motion for relief from the
12 automatic stay to foreclose on the
13 Harrison St Property, alleging an
14 arrearage of over \$98,000.00. The motion
15 (TJS-001) was granted.

16 8. Ramoan T. Roberts, Case No. 08-45255 N.D.
17 California

18 a. Chapter 13
19 Date Filed: 09/19/2008
20 Date Dismissed: 10/16/2008

21 b. Common Assets with Other Named Debtors

22 (1) No Schedules filed.

23 (2) Mailing Matrix lists Litton Loan
24 Servicing for the 950 Harrison St. # 207
25 property for notice of Robert's
26 bankruptcy case.

27 9. Annette Hornsby, Case No. 08-29857 E.D. California

28 a. Chapter 13
29 Date Filed: 07/21/2008
30 Date Dismissed: 09/05/2008

31 b. Common Assets with Other Named Debtors

32 (1) 2319 Bennington Dr. Vallejo, CA (100%)

33 (2) 324 Moonraker, Vallejo, CA (100%)

34 (3) 8019 Michigan, Oakland, CA (100%)

35 (4) 950 Harrison St #207, San Francisco, CA
36 (100%)

37 c. Common Addresses and Information with other
38 Named Debtors

39 (1) Hornsby's address listed as 2319

Bennington Dr., Vallejo, CA

d. Additional Information

(1) Stan Shore Trust filed a motion for relief from the stay alleging that Defendant-Debtor was more than \$40,000.00 in arrears on the obligation secured by the senior deed of trust (Wachovia identified as the creditor) and was in default in payments to the Trust since April 1, 2008. The motion was not heard, the case being dismissed pursuant to 11 U.S.C. § 521(I).

e. Common Addresses and Information with other
Named Debtors

10. Annette Hornsby, Case No. 08-41908, N.D. California

a. Chapter 13

Date Filed: 04/21/2008

Date Dismissed: 06/26/2008

b. Common Assets with Other Named Debtors

- (1) 2319 Bennington Dr. Vallejo, CA (Sole and separate residence)
- (2) 324 Moonraker, Vallejo, CA (Sole and separate residence)
- (3) 8019 Michigan, Oakland, CA (Sole and separate residence)
- (4) 950 Harrison St. #207, San Francisco, CA (Sole and separate residence)

c. Common Addresses and Information with other
Named Debtors

(1) Hornsby's addressed listed as 2319
Bennington Dr., Vallejo, CA

11. Annette Hornsby, Case No. 08-40528 N.D. California

a. Chapter 13

Date Filed: 02/05/2008

Date Dismissed: 03/18/2008

b. Common Assets with Other Named Debtors

(1) No Schedules Filed

c. Common Addresses and Information with other

Named Debtors

(1) Hornsby's addressed listed as 2319
Bennington Dr., Vallejo, CA

12. Annette Hornsby, Case No. 07-44398 N.D. California

a. Chapter 13

Date Filed: 12/18/2007

Date Dismissed: 01/31/2008

b. Common Assets with Other Named Debtors

(1) No Schedules Filed

c. Common Addresses and Information with other
Named Debtors

(1) Hornsby's addressed listed as 2319
Bennington Dr., Vallejo, CA

13. Ramoan T. Roberts, Case No. 07-42672 N.D.
California

a. Chapter 13

Date Filed: 08/23/2007

Date Dismissed: 11/08/2007

b. Common Assets with Defendant-Debtor

(1) No Schedules Filed.

c. Common Addresses and Information with Defendant-Debtor

(1) Robert's address listed as 6273 Brookside Ave, Oakland, CA.

14. Ramoan T. Roberts, Case No. 07-41737 N.D.
California

a. Chapter 13

Date Filed: 06/08/2007

Date Dismissed: 07/25/2007

b. Common Assets with Defendant-Debtor

(1) 6273 Brookside, 1/4 interest (no other information)

(2) 5204 Starter, 1/4 interest (no other information)

(3) 5208 Starter, 1/4 interest (no other information)

1 c. Common Addresses and Information with
2 Defendant-Debtor

3 (1) Robert's address listed as 6273 Brookside
4 Ave, Oakland, CA. No prior addresses are
5 listed in response to Question 15 on the
6 Statement of Financial Affairs,
7 notwithstanding Roberts listing the
8 3234 Adeline St. address in his prior
9 Chapter 13 case filed just two months
10 earlier. Bankr. N.D. Cal. 07-41737
11 Dckt. 13 at 17.

12 15. Ramoan T. Roberts, Case No. 07-41069 N.D.
13 California

14 a. Chapter 13
15 Date Filed: 04/09/2007
16 Date Dismissed: 05/17/2007

17 b. Common Assets with Defendant-Debtor

18 (1) 6273 Brookside, 1/4 interest (no other
19 information)
20 (2) 5204 Starter, 1/4 interest (no other
21 information)
22 (3) 5208 Starter, 1/4 interest (no other
23 information)

24 c. Common Addresses and Information with
25 Defendant-Debtor

26 (1) Robert's address listed as 3234 Adeline
27 St., Berkeley, CA. This property is not
28 listed on Schedule A as property of
Roberts and no Schedule G (leases) was
filed. Bankr. N.D. Cal. 07-41069
Dckt. 13 at 3. No prior addresses are
listed in response to Question 15 on the
Statement of Financial Affairs. *Id.*,
at 17.

16. NARDAC, LLC, Case No. 06-42363 N.D. California

17 a. Chapter 11
18 Date Filed: 12/05/2006
19 Date Dismissed: 06/19/2007

20 b. Common Assets with Defendant-Debtor

21 (1) Prior to Commencement of Chapter 11 case
22 Defendant Debtor Transferred a 25%
23 interest from herself to the debtor

1 corporation:

2 (a) 6273 Brookside Ave, Oakland, CA

3 (b) 5204 Starter Ave, Las Vegas, NV

4 (c) 5208 Starter Ave, Las Vegas, NV

5 c. Common Addresses and Information

6 (1) NARDAC, LLC Owners

7 (a) Defendant-Debtor

8 (b) Kennett P. Taylor

9 (i) Taylor identified as "business
10 partner," but is identified as
11 a "tenant" in subsequent
12 bankruptcy cases.

13 (c) Certificate of Limited Liability
14 Company for NARDAC, LLC identifies
15 Kennett Taylor and Annette Hornsby,
16 each, as Co-Managers. Bankr. N.D.
17 Cal. No. 06-42363 Dckt. 11.

18 (d) Statement of Financial Affairs
19 states that NARDAC, LLC was holding
20 property identified as the
21 "remainder interests in each of the
22 three parcels of real property:
23 6273 Brookside Avenue, Oakland;
24 5204 Starter Avenue and 5208 Starter
25 Avenue, Las Vegas, Ne" which is
26 property owned by Annette Hornsby.
27 Bankr. N.D. Cal. No. 06-42363,
28 Question 14, Dckt. 13.

(e) Kennett Taylor and Annette Hornsby
are identified in the Statement of
Financial Affairs as 50% each owners
of NARDAC, LLC. *Id.*, Question 21.

Defendant-Debtor's Opposition

The Defendant-Debtor filed an opposition to the Motion for
Entry of Default Judgment. It asserts that the first three
bankruptcies filed by the Defendant-Debtor in *pro se* in the
Northern District of California and should be excused because of
her lack of knowledge of bankruptcy law. It is alleged that it was

1 only after the Defendant-Debtor obtained a "free consultation with
 2 a [unnamed] Female Bankruptcy Lawyer in Hayward, California" was
 3 she informed that she should be filing her bankruptcy cases in the
 4 Eastern District of California.

5 It is further alleged that an unnamed bankruptcy judge in the
 6 Northern District of California "instructed" the Defendant-Debtor
 7 to "re-file again in Sacramento." It is asserted that the
 8 Defendant-Debtor then filed in the Eastern District of California
 9 her fourth bankruptcy case "upon the advice of the [Northern
 10 District Bankruptcy] judge." The fourth bankruptcy case was filed
 11 in *pro se*, and dismissed. Then the Defendant-Debtor obtained
 12 sufficient funds and hired attorney Carol Hudson to file a
 13 Chapter 11 case. That case was converted to one under Chapter 7.

14 The Defendant-Debtor has provided her declaration in
 15 opposition to the Motion now before the court. The Defendant-
 16 Debtor states under penalty of perjury the following:

- 17 A. She opposes a five year bar to filing further bankruptcy
 18 petitions due to the fact that "all of my filings were
 made with good intentions and in [no] way was I trying to
 defraud, mislead or abuse the Court."
- 19 B. It was only after speaking with the unnamed female lawyer
 20 in Hayward, California, did the Defendant-Debtor learn
 that she should be filing her fourth bankruptcy case in
 the Eastern District of California.
- 22 C. The bankruptcy judge in the Northern District of
 23 California "instructed" the Defendant-Debtor to file her
 fourth bankruptcy case in the Eastern District of
 California.
- 24 D. She relied upon the "advice" of the judge in the Northern
 25 District of California to file her fourth bankruptcy case
 in the Eastern District of California.
- 27 E. As a "*pro per*," the Defendant-Debtor is not familiar with
 28 Bankruptcy law, and "never had any intention to abuse the
 system."

1 F. The current bankruptcy case has been filed to prevent a
 2 foreclosure on her residence. The Defendant-Debtor is
 3 obtaining a loan modification for this debt.

3 **OBTAINING A DEFAULT JUDGMENT**

4 Federal Rule of Civil Procedure 55 and Federal Rule of
 5 Bankruptcy Procedure 7055 govern default judgments. *In re McGee*,
 6 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default
 7 judgment of nondischargeability of a claim is a two-step process
 8 which requires: (1) entry of the defendant's default, and (2) entry
 9 of a default judgment. *Id.* at 770.

10 Even when a party has defaulted and all requirements for a
 11 default judgment are satisfied, a claimant is not entitled to a
 12 default judgment as a matter of right. 10 Moore's Federal Practice
 13 - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd
 14 ed.). Entry of a default judgment is within the discretion of the
 15 court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986); *In re*
 16 *McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006) (citing *In re*
 17 *Kubick*, 171 B.R. 658, 659-60 (B.A.P. 9th Cir. Alaska 1994).
 18 Default judgments are not favored, as the judicial process prefers
 19 determining cases on their merits whenever reasonably possible. *Id.*
 20 at 1472. Factors which the court may consider in exercising its
 21 discretion include:

- 22 (1) the possibility of prejudice to the plaintiff,
- 23 (2) the merits of plaintiff's substantive claim,
- 24 (3) the sufficiency of the complaint,
- 25 (4) the sum of money at stake in the action,
- 26 (5) the possibility of a dispute concerning material facts,
- 27 (6) whether the default was due to excusable neglect, and
- 28 (7) the strong policy underlying the Federal Rules of Civil

1 Procedure favoring decisions on the merits.

2 *Eitel v. McCool*, 782 F.2d at 1471-72 (citing 6 Moore's Federal
3 Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R.
4 Coquillette & Gregory P. Joseph eds. 3rd ed.)); *In re Kubick*, 171
5 B.R. at 661-662.

6 In fact, before entering a default judgment the court has an
7 independent duty to determine the sufficiency of Plaintiff's claim.
8 *Id.* at 662. Entry of a default establishes well-pleaded
9 allegations as admitted, *In re McGee*, 359 B.R. at 772, but factual
10 allegations that are unsupported by exhibits are not well pled and
11 cannot support a claim. *Id.* at 774. Thus, a court may refuse to
12 enter default judgment if Plaintiff did not offer evidence in
13 support of the allegations. See *id.* at 775.

14 The court finds that entering a default judgment is proper in
15 this Adversary Proceeding. There is prejudice to the Plaintiff,
16 the U.S. Trustee, in having to adjudicate this matter on the
17 Motion. The Defendant-Debtor has demonstrated the propensity to
18 repeatedly file non-productive bankruptcy cases requiring the time,
19 effort, and resources of the U.S. Trustee and bankruptcy trustees
20 to address and seek dismissal of those cases. The U.S. Trustee has
21 presented the court with a strong, if not compelling case for the
22 relief requested. The present Motion is based on objective facts
23 which are not the subject of any dispute. The Complaint and Motion
24 clearly state with particularity the grounds for relief. The court
25 is not presented with any basis for believing that the failure to
26 respond was due to excusable neglect. The Defendant-Debtor has
27 been represented by counsel and is very experienced in filing
28 cases, and having them dismissed, in the bankruptcy court. The

1 court has required the Plaintiff to provide evidence in support of
2 the allegations, and judgment is requested based on the evidence
3 presented, not merely on the Defendant-Debtor's failure to answer.

4 **Injunction Imposing Pre-Filing Review Requirement**

5 The bankruptcy courts are established by an act of Congress
6 and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. §105
7 provide the bankruptcy courts with the inherent power to enter pre-
8 filing orders against vexatious litigants. *Molski v. Evergreen*
9 *Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v Reid,*
10 *Murdock & Co.*, 177 F. 684, (7th Cir 1910), *Weissman v. Quail Lodge*
11 *Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999), and *In re Bialac* 15 B.R.
12 901, 9th Cir. B.A.P. 1981), *affd.* 694 F2d 625 (9th Cir. 1982). A
13 court must be able to regulate and provide for the proper filing
14 and prosecuting of proceedings before it. 11 U.S.C. §105(a)
15 expressly grants the court the power to issue any order, process,
16 or judgment that is necessary or appropriate to carry out the
17 provisions of this title. Further, the court is authorize to *sua*
18 *sponte* take any action or make any determination necessary or
19 appropriate to enforce or implement court orders or rules, or to
20 prevent an abuse of process. This power exists, and it does not
21 matter whether it is being exercised pursuant to 11 U.S.C. §105 or
22 the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500
23 (7th Cir. 2007); and *Peugeot v. U.S. Trustee (In re Crayton)*,
24 192 B.R. 970, 976 (9th Cir. BAP 1996).

25 The Ninth Circuit Court of Appeals re-stated the grounds and
26 methodology for pre-filing review requirements as an appropriate
27 method for the federal courts in effectively managing serial filers
28 or vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al*,

1 500 F.3d 1047 (9th Cir. 2007), *en banc* hearing denied, 521 F.3d
2 1215 (9th Cir. 2008); and *In re Fillbach*, 223 F.3d 1089 (9th Cir.
3 2000). While maintaining the free and open access to the courts,
4 it is also necessary to have that access be properly utilized and
5 not abused. The abusive filing of bankruptcy petitions, motions,
6 and adversary proceedings for purposes other than as allowed by law
7 diminishes the quality of and respect for the judicial system and
8 laws of this country.

9 As addressed by the Ninth Circuit Court of Appeals in *Molski*,
10 the ordering of a pre-filing review requirement is not to be
11 entered with undue haste because such orders can tread on a
12 litigant's due process right of access to the courts. As discussed
13 in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S. Ct.
14 1148, 71 L. Ed. 2d 265 (1982), the right to seek redress from the
15 court is a protected right for civil litigants. The issuing of a
16 pre-filing only is to be made only after a cautious review of the
17 pertinent circumstances.

18 However, the Ninth Circuit Court of Appeals clearly draws the
19 line that a person's right to present claims and assert rights
20 before the federal courts is not a license to abuse the judicial
21 process and treat the courts merely as a tool to abuse others.

22 Nevertheless, "[f]lagrant abuse of the judicial process
23 cannot be tolerated because it enables one person to
24 preempt the use of judicial time that properly could be
25 used to consider the meritorious claims of other
litigants." *De Long*, 912 F.2d at 1148; see *O'Loughlin v.
Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

26 *Molski v. Evergreen Dynasty Corp, et al*, supra, pg 1057. In the
27 Ninth Circuit the trial courts apply a four-factor analysis in
28 determining if and what type of pre-filing or other order should

1 properly be issued based on the conduct of the party at issue.

- 2 1. First, the litigant must be given notice and a chance to
be heard before the order is entered.
- 3 2. Second, the district court must compile "an adequate
4 record for review."
- 5 3. Third, the district court must make substantive findings
6 about the frivolous or harassing nature of the
plaintiff's litigation.
- 7 4. Finally, the vexatious litigant order "must be narrowly
8 tailored to closely fit the specific vice encountered.

9 *Id.* These requirements are met for this Adversary Proceeding.

10 **Imposing a Pre-Filing Review Requirement is Proper**

11 The Defendant-Debtor's repetitive filing of bankruptcy cases,
12 both in her name and cases being filed for properties in which she
13 has, does, or did assert rights and interests, demonstrates abusive
14 conduct and misuse of the bankruptcy laws. Though the bankruptcy
15 court is open to all and a person's financial, personal, or other
16 missteps are not a bar to seeking the extraordinary relief
17 available, debtors must seek the relief and prosecute the cases in
18 good faith.

19 In this case the Defendant-Debtor has chosen to repeatedly
20 file a series of Chapter 13 cases in which she has failed to file
21 minimum necessary documents. In the Ramoan T. Roberts, Kennett P.
22 Taylor, and NARDAC, LLC cases no action was taken to prosecute
23 those cases or provide for paying claims. The filing of those
24 series of cases created a mosaic of automatic stays applicable to
25 properties in which the Defendant-Debtor asserts ownership of or
26 interests in. The Defendant-Debtor's multiple filing of bankruptcy
27 cases led to the automatic stay not applying in her personal cases
28 as provided in 11 U.S.C. § 362(c)(4). In the Debtor's seven

1 personal bankruptcy cases she has failed to fund any Chapter 13
2 Plan or propose a Chapter 11 plan in the current case. The
3 Defendant-Debtor has been unable to timely file monthly operating
4 reports in her current Chapter 11 case and the information in the
5 reports lacks credibility. Civil Minutes of December 5, 2012
6 Status Conference, Dckt. 77.

7 The opposition raised by the Defendant-Debtor, who is
8 represented by counsel, is nothing more than an anemic "I didn't
9 try to do wrong," "I'm just a *pro se* who doesn't understand
10 bankruptcy law," and "I filed the current bankruptcy case to stop
11 a foreclosure on my residence." The Defendant-Debtor ignores, and
12 attempts to divert the court's attention from, the series of
13 16 bankruptcy cases filed which relate to her properties.

14 This Defendant-Debtor is a sophisticated business person who
15 owns/owned or has/had interests in multiple real properties in
16 various States. The Defendant-Debtor is sophisticated enough to
17 have a limited liability company through which to acquire and hold
18 real properties. The Defendant-Debtor is a registered nurse, which
19 indicates a person with more than an undergraduate college
20 education and a level of sophistication well above that of the
21 average least sophisticated consumer.

22 The court is cognizant of the significant impact the filing of
23 a bankruptcy case has on not only the Defendant-Debtor, but
24 creditors and other persons. Even if due to the repeated filings
25 the automatic stay does not go into effect as a matter of law, the
26 mere presentation of a petition and the significant sanctions
27 imposed on someone violating the stay can work to prevent creditors
28 from legitimately enforcing their rights. During the multi-year

1 period in which the Defendant-Debtor has been filing bankruptcy
2 case, she has avoided paying creditors, as well as failing or
3 intentionally refusing to fund any bankruptcy plan.

4 Upon considering the Complaint and Motion for Entry of a
5 Default Judgment, the court finds that the U.S. Trustee's requested
6 relief of a pre-filing review requirement to be measured (and quite
7 generous) relief under these circumstances. The U.S. Trustee does
8 not seek to dismiss the Defendant-Debtor's current Chapter 11 case.
9 The requested relief allows the Defendant-Debtor and Defendant-
10 Debtor's Chapter 11 counsel to prosecute the case in good faith.

11 A pre-filing review requirement is of little impact to a
12 debtor seeking legitimate relief from the bankruptcy court. In
13 this case, the pre-filing review requires the Defendant-Debtor
14 (whether represented by counsel or continuing to act in *pro se*) to
15 have the initial bankruptcy pleadings completed and on their face
16 appear to be completed consistent with the requirements of the
17 Bankruptcy Code and Chapter under which the Defendant-Debtor seeks
18 to file bankruptcy. It imposes no significant cost or delay, in
19 that the petition, schedules, and other basic pleadings need to be
20 prepared at the time of filing. The ability to file a subsequent
21 case rests solely with the Defendant-Debtor, requiring the
22 Defendant-Debtor to do and comply with only what the Bankruptcy
23 Code requires.

24 The pre-filing review requirement also has the effect of
25 assisting this Defendant-Debtor to be prepared for the successful
26 prosecution of any subsequent bankruptcy case, rather than continue
27 to flounder and squander rights under the Bankruptcy Code. To the
28 extent that the Defendant-Debtor has the ability to cure any

1 defaults and restructure any debts in a future bankruptcy case, she
2 will be on track to do so during this five year pre-filing review
3 period.

4 The Defendant-Debtor offers no reason why the pre-filing
5 review imposes any burden on this multiple bankruptcy filer. The
6 court heard oral argument on this Motion at the Status Conference
7 in this Adversary Proceeding. Rather, it appeared that the only
8 "burden" that the Defendant-Debtor fears is that she could not
9 continue in her pattern of filing non-productive bankruptcy cases.²

10 The court finds from the totality of the circumstances that
11 Defendant-Debtor's conduct in this case and prior cases before this
12 court provides more than a sufficient basis for granting the relief
13 requested. The Motion is granted and the court shall enter a
14 judgment against the Defendant-Debtor and order the following
15 relief:

16 1. Issuance of an injunction which bars filing of further
17 bankruptcy cases by the Defendant-Debtor, Annette Hornsby, in her
18 name or in the name of any alias, for a period of five years from
19 the date of the judgment, unless the prior authorization is
20 obtained from the Chief Bankruptcy Judge in the District in which
21 the Defendant-Debtor desires to file a bankruptcy case.

22 2. Authorizing and ordering the Office of the Clerk to not
23

24 ² For this Defendant-Debtor and Counsel, she does not find it
25 strange or unusual that one person would be filing seven personal
26 bankruptcy cases and nine related cases. This is highly unusual and
27 the vast majority of debtors commence only one or two bankruptcy cases
28 in their lifetime. Those debtors prosecute those cases they file,
receive the extraordinary relief available under the Bankruptcy Code,
fulfill their obligations under the Bankruptcy Code, and never again
grace this court with their presence. This Defendant-Debtor has made
the bankruptcy court her home for multiple cases over the past seven
years.

1 file any bankruptcy petition filed by the Defendant-Debtor, Annette
2 Hornsby, in her name or in the name of any alias, which is not
3 approved for filing by the Chief Judge for the Bankruptcy District
4 in which Defendant-Debtor attempts to file a bankruptcy case.

5 3. Granting the U.S. Trustee costs and expenses, with a
6 costs bill to be filed and served on or before April 26, 2013.

7 Dated: April 8, 2013

RONALD H. SARGIS, Judge
United States Bankruptcy Court

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that the attached document(s) was served by mail to the following entities listed at the address(es) shown below:

Service List:

Annette Hornsby
2319 Bennington Drive
Vallejo, CA 94591

9 Judith Hotze
501 I St #7-500
10 Sacramento, CA 95814

11 Sunita Kapoor
12 4115 Blackhawk Plaza Cir #100
12 Danville, CA 94509

13 Office of the U.S. Trustee
14 Robert T Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

DATE: 4/9/13

Deputy Clerk

mgas